



# COMMONWEALTH of VIRGINIA

M. NORMAN OLIVER, MD, MA  
STATE HEALTH COMMISSIONER

**Department of Health**  
PO BOX 2448  
RICHMOND, VA 23218

TTY 7-1-1 OR  
1-800-828-1120

December 9, 2019

Thomas J. Stallings, Esquire  
McGuire Woods  
800 East Canal Street  
Richmond, Virginia 23219

**RE: CERTIFICATE OF PUBLIC NEED  
(COPN) REQUEST NUMBER VA-8453  
FIRST MERIDIAN MEDICAL CORP.  
Suffolk, Planning District (PD) 20  
Establishment of a Specialized Center  
For Magnetic Resonance Imaging (MRI)  
with One Relocated MRI Scanner**

Dear Mr. Stallings:

In accordance with Article 1.1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 *et seq.*) of the Code of Virginia, I have reviewed the application submitted and record compiled in relation to the above-referenced proposed project. As required by Subsection B of Virginia Code § 32.1-102.3, I have considered all matters, listed therein, that must be taken into account in making a determination of public need.

I have received, reviewed and adopted the enclosed findings, conclusions and recommended decision of the adjudication officer who convened the informal fact-finding conference to discuss the application, and who reviewed the administrative record pertaining to the proposed project.

**Based on my review of the project and on the recommended decision of the adjudication officer, I am denying the proposed project captioned above. The project does not merit approval and should not receive a Certificate. It is not necessary to meet a public need.**

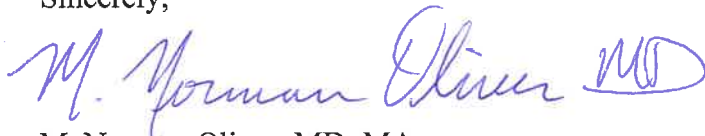
The reasons for my decision include the following:

- (i) The First Meridian project would exacerbate the underutilization of existing MRI services that are proximate to the proposed site;

- (ii) Although First Meridian maintains that the proposed site is closer than its other sites to 20 percent of its patients, the project would involve a distant relocation of approximately 22 miles;
- (iii) The project is not necessary to enhance accessibility of low-cost imaging in PD 20; and
- (iv) The status quo is an appropriate and preferable alternative to the proposed project.

In accordance with Rule 2A:2 of the Rules of the Supreme Court of Virginia, any aggrieved party to an administrative proceeding choosing to appeal a case decision\* shall file, within 30 days after service of the case decision, a signed notice of appeal with "the agency secretary." I would consider such a notice sufficiently filed if it were addressed and sent to the Office of the State Health Commissioner, and timely received by that office, at the James Madison Building, Thirteenth Floor, 109 Governor Street, Richmond, Virginia 23219. Under the Rule, when service of a decision is "accomplished by mail," three days are added to the 30-day period.

Sincerely,

A handwritten signature in blue ink that reads "M. Norman Oliver MD". The signature is fluid and cursive, with the initials "MD" written separately at the end.

M. Norman Oliver, MD, MA  
State Health Commissioner

Encl.

cc (via email):  
Nancy Welch, MD, MHA, MBA  
Acting Director, Western Tidewater Health District  
Amanda Lavin, Esq.  
Assistant Attorney General  
Deborah Waite,  
Virginia Health Information  
Erik O. Bodin, III  
Director, Division of Certificate of Public Need  
Douglas R. Harris, JD  
Adjudication Officer

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\* In accordance with Va. Code § 2.2-4023, the signed original of this final agency case decision "shall remain in the custody" of the Department, while the applicant is receiving a photocopy of the original letter and attachment.

**RECOMMENDATION  
TO THE STATE HEALTH COMMISSIONER  
FOLLOWING AN INFORMAL FACT FINDING  
CONFERENCE REGARDING CERTIFICATE  
OF PUBLIC NEED (COPN or “Certificate”)  
REQUEST NUMBER VA-8453  
FIRST MERIDIAN MEDICAL CORP.  
t/a MRI & CT DIAGNOSTICS  
Suffolk, Planning District (PD) 20  
Health Planning Region (HPR) V  
Establishment of a Specialized Center  
For MRI Imaging through Relocation of  
One MRI Scanner**

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**I. Introduction**

This document is a recommended case decision. It is submitted to the State Health Commissioner (hereinafter, the “Commissioner”) for his consideration and adoption. It follows an informal fact-finding conference (IFFC) conducted in accordance with the Virginia Administrative Process Act (APA),<sup>1</sup> and has been written after a review of the Virginia Department of Health’s (“Department’s”) administrative record of the above-referenced application for a COPN. This recommended decision follows the criteria of need, or the statutory considerations, that the Commissioner must consider in determining whether to find public need to grant a COPN.<sup>2</sup>

**II. Authority**

Article 1 of Chapter 4 of Title 32.1 (§ 32.1-102.1 et seq.) of the Virginia Code (the “COPN law”) addresses medical care facilities and provides that “[n]o person shall commence any project without first obtaining a [Certificate] issued by the Commissioner.”<sup>3</sup> The COPN law defines “project” to include the above-captioned proposal.<sup>4</sup>

**III. Procedural Background; Corroborating Document in the Record**

1. An IFFC on the project was held on August 29, 2019. Principle agents of the applicant appeared and were represented by legal counsel. The applicant was given the opportunity to present evidence on the merits of its project through the submission of exhibits and the presentation and recording of witness testimony. Through counsel, the applicant presented argument on the evidence.

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<sup>1</sup> Va. Code § 2.2-4000 et seq., *specifically*, Va. Code § 2.2-4019; *see also* Va. Code § 32.1-102.6.

<sup>2</sup> Va. Code § 32.1-102.3 (B).

<sup>3</sup> Va. Code § 32.1-102.3 (A).

<sup>4</sup> Va. Code § 32.1-102.1.

2. A facilities planning analyst from DCOPN<sup>5</sup> attended the IFFC and presented that division's staff report on the project, dated July 19, 2019 (the "DCOPN staff report"). DCOPN recommends the denial of the proposed project (the "First Meridian project"), due to a general absence of a showing of public need.
3. At the close of the IFFC, a briefing schedule was devised for post-IFFC submittals. This gave an opportunity for the applicant to augment the adjudicatory record with written materials on the First Meridian project. The close of the adjudicatory record occurred on September 26, 2019.
4. The factual bases underlying the recommended decision made herein consist of evidence in the administrative record, including information in the application and responses to completeness questions from the applicant, the DCOPN staff report, the transcript of the IFFC, and submittals made by the applicant's counsel subsequent to the IFFC. The current document discusses the most salient facts and argument made in gauging the proposed project against the statutory considerations, below.
5. By reference, I hereby incorporate the DCOPN staff report into the present document for the purpose of establishing or corroborating basic facts and demonstrating analysis that supports or otherwise substantiates the evidentiary basis on which the recommendation herein is made.

#### **IV. Findings of Fact and Conclusions of Law**

Based on the administrative record, I make and offer the following findings of fact and conclusions of law:

1. First Meridian Medical Corp., t/a MRI & CT Diagnostics ("First Meridian") is a Virginia for-profit, stock corporation. The corporation operates three freestanding imaging centers in PD 20, two in Virginia Beach and one in Chesapeake.
2. First Meridian proposes to establish MRI services in a new location in Suffolk by relocating and replacing an MRI scanner located at its Pembroke Boulevard site in Virginia Beach. The new site is located approximately 22 miles from the Pembroke facility and proximate to two underutilized MRI services in Suffolk. Estimated total capital costs for the project are \$2,674,432. These costs would be primarily covered by accumulated reserves, with a conventional loan covering the remainder.
3. After DCOPN's 70-day review of the First Meridian project (including a public hearing), that division concluded its review by making a staff recommendation that the project be denied.
4. A. The Proposed Project in Relation to the Eight Statutory Considerations. Facts and conclusions about the project in relation to the statutory considerations include:

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<sup>5</sup> DCOPN is the work unit, or division, within the Department that comprises the Commonwealth's professional health facilities planning staff.

- 1. The extent to which the proposed service or facility will provide or increase access to needed services for residents of the area to be served, and the effects that the proposed service or facility will have on access to needed services in areas having distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care.**

The First Meridian project would not materially increase geographic access to MRI services because it would be located less than two miles from two existing MRI services that have available capacity. It would unnecessarily duplicate underutilized existing services. DCOPN stated it was not aware of any other barriers to access to care.

- 2. The extent to which the project will meet the needs of the residents of the area to be served, as demonstrated by each of the following: (i) The level of community support for the project demonstrated by citizens, businesses, and governmental leaders representing the area to be served; (ii) The availability of reasonable alternatives to the proposed service or facility that would meet the needs of the population in a less costly, more efficient, or more effective manner; (iii) Any recommendation or report of the regional health planning agency regarding an application for a certificate that is required to be submitted to the Commissioner pursuant to subsection B of § 32.1-102.6; (iv) Any costs and benefits of the project; (v) The financial accessibility of the project to the residents of the area to be served, including indigent residents; and (vi) At the discretion of the Commissioner, any other factors as may be relevant to the determination of public need for a project.**

Community Support. DCOPN received at least eight letters of support, including a letter from Anthem, members of the medical community, a Virginia senator and a Virginia delegate. DCOPN received a letter of opposition from Sentara Healthcare.

Reasonable Alternatives. A reasonable alternative to the Encompass project exists: Maintenance of the status quo would continue to allow existing resources to meet PD 20's need for MRI scanning services. First Meridian maintains that maintaining the status quo is not an option because the current site is deteriorating, but this is a reason to address site shortcomings with its landlord, not a reason to relocate.

Regional Recommendation. Currently, no regional health planning agency exists in HPR V to assist the Commissioner with making determinations by providing recommendations on applications for a COPN.

Costs and Benefits. DCOPN states that the total capital costs of the project are reasonable. The applicant asserts that the project carries the benefit of providing services to patients at lower costs, and would be closer to approximately 20 percent of patients it has served.

Financial Accessibility. DCOPN states that several entities, including free clinics, laud the level of charity care provided by First Meridian to patients they refer to it.

Discretionary Factors. No factors, other than those discussed elsewhere in this document, relating to the review of this project are clearly remarkable or appear to call for the exercise of the

Commissioner's discretion in identifying or evaluating them in relation to this portion of the criterion.

**3. The extent to which the application is consistent with the State Medical Facilities Plan.**

No provision of the State Medical Facilities Plan (SMFP) addresses the relocation of an existing MRI scanner.

**4. The extent to which the proposed service or facility fosters institutional competition that benefits the area to be served while improving access to essential health care services for all persons in the area to be served.**

As a low-cost provider of imaging services, First Meridian maintains its project would foster institutional competition in an area where all such providers are high-cost, hospital-based MRI services. DCOPN concludes that access to low-cost MRI services already exists in PD 20 and approval is likely to have a detrimental effect on current providers in the immediate area, which have available capacity. I agree with DCOPN. Approval of the First Meridian project would impose additional, non-beneficial competition.

**5. The relationship of the project to the existing health care system of the area to be served, including the utilization and efficiency of existing services or facilities.**

In light of the close proximity of the proposed site to several imaging providers with underutilized MRI scanners, the proposed project would likely have a harmful effect on the existing health care system.

**6. The feasibility of the project, including the financial benefits of the project to the applicant, the cost of construction, the availability of financial and human resources, and the cost of capital.**

The First Meridian project is feasible and likely to bring financial benefits to the applicant. Costs are reasonable and resources are available.

**7. The extent to which the project provides improvements or innovations in the financing and delivery of health services, as demonstrated by: (i) The introduction of new technology that promotes quality, cost effectiveness, or both in the delivery of health care services; (ii) The potential for provision of services on an outpatient basis; (iii) Any cooperative efforts to meet regional health care needs; (iv) At the discretion of the Commissioner, any other factors as may be appropriate.**

New Technology. Not applicable, without prejudice to the applicant.

Outpatient Opportunities. The project would provide services on an outpatient basis.

Cooperative Efforts. First Meridian does not identify any specific cooperative efforts to meet regional health care needs.

Discretionary Factors. No factors, other than those discussed elsewhere in this document, relating to the review of this project are clearly remarkable or appear to call for the exercise of the Commissioner's discretion in identifying or evaluating them in relation to this portion of the criterion.

**8. In the case of a project proposed by or affecting a teaching hospital associated with a public institution of higher education or a medical school in the area to be serve (i) the unique research, training, and clinical mission of the teaching hospital or medical school, and (ii) any contribution the teaching hospital or medical school may provide in the delivery, innovation, and improvement of health care for citizens of the Commonwealth, including indigent or underserved populations.**

Not applicable, without prejudice to the applicant.

B. Conclusion. Based on a review of the record and the findings of fact made above, and after a careful reading of the eight statutory considerations of public need as a whole, I conclude that, approval of the First Meridian project would not be reasonable or appropriate under the COPN law.

#### V. Recommendation

**Based on my assessment, I conclude that the First Meridian project does not merit approval. I recommend that First Meridian not receive a certificate authorizing the proposed project.**

In addition to conclusions drawn throughout this document, specific reasons for my recommendation include:

- (i) The First Meridian project would exacerbate the underutilization of existing MRI services that are proximate to the proposed site;
- (ii) Although First Meridian maintains that the proposed site is closer than its other sites to 20 percent of its patients, the project would involve a distant relocation of approximately 22 miles;
- (iii) The project is not necessary to enhance accessibility of low-cost imaging in PD 20; and
- (iv) The status quo is an appropriate and preferable alternative to the proposed project.

Respectfully submitted,



Douglas R. Harris, JD  
Adjudication Officer

November 20, 2019